

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of BISHOP A’KING RICHARD  
SMITH, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner,

and

BISHOP A’KING RICHARD SMITH,

Appellant,

v

MARY A. BONNER,

Respondent-Appellee,

and

LEON POLK,

Respondent.

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Before: Jansen, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

The minor child, through his attorney/guardian ad litem, appeals by leave granted from the order of disposition denying petitioner’s request to terminate the parental rights of his mother, respondent Mary Bonner, pursuant to MCL 712A.19b(3)(c)(i), (g), (j), and (l), and mandating reunification efforts.<sup>1</sup> We reverse and remand for a determination of the child’s best interests pursuant to MCL 712A.19b(5).

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<sup>1</sup> The minor’s father, Leon Polk, is deceased.

UNPUBLISHED  
January 18, 2005

No. 256870  
Ingham Circuit Court  
Family Division  
LC No. 02-329398-NA

There is no question petitioner proved by clear and convincing evidence that respondent's parental rights to her other seven children had been terminated based on substantial neglect and abuse, MCL 712 A.19b(3)(1). Respondent pleaded to this allegation at the pretrial, testifying that her other children were removed and her parental rights to them terminated in part because of her failure to protect them from sexual abuse. Respondent's attorney conceded during closing arguments that this statutory ground had indisputably been proven. Thus, regardless whether termination was appropriate under any of the other statutory grounds, the trial court clearly erred in failing to find this statutory ground was proven by clear and convincing evidence.

Once this statutory ground was established, the court was required to terminate respondent's parental rights unless it determined termination was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 346, 350; 612 NW2d 407 (2000). There is no indication from the trial court's opinion that it even addressed the best interests of the child. Instead, as alleged by appellant, it appears the trial court declined to order termination based on a consideration of respondent's rights and interests. However, once a statutory ground for termination is established, a parent's liberty interest in the companionship, care and custody of a child yields to the state's interest in protection of the child. *Trejo, supra* at 356. The requirement that a court terminate parental rights upon a showing of a statutory ground, in the absence of contrary best interests of the child, does not violate the parent's right to due process. *Id.*

The trial court here clearly erred in failing to address the best interests of the child. Moreover, a review of the record as a whole indicates termination, although contrary to respondent's interests, would not have been contrary to the best interests of the child. The child had been in foster care for over three years. Additionally, not only was there no parent-child bond between respondent and the minor, the child had intense feelings of anger and hatred toward respondent that caused him to exhibit severe behavioral problems. Accepting the fact that these feelings resulted solely from the child's long separation from respondent and his attachment to the foster family, as admitted by the child's therapist, does not change the fact that these feelings existed and were causing the child considerable distress. Respondent herself testified the child told her he hated her, did not want to visit, threw toys at her and had to be carried kicking and screaming into the visitation room. Thus, despite the trial court's finding, there existed different versions of the nature of the visits, and respondent corroborated some of the difficulties identified by the caseworker, foster mother and the child's therapist.

There was no testimony presented to indicate the child could safely be returned to respondent's care within a reasonable period of time or that such a return would be in the child's best interests. Dr. Sharon Hobbs, one of respondent's experts, testified it would take at least a year to recreate a bond between the child and respondent and that she could not give an opinion with regard to the best interests of the child because she had not treated him or observed him interact with respondent. Dr. Leonard Vanderjagt testified that parenting Bishop would take extra patience and skills and that it was plausible respondent did not have the skills necessary to ever parent a child like Bishop because of her impaired cognitive abilities and functioning. Respondent's therapist, Dr. Donald Williams, testified that respondent's cognitive impairment would cause her to have greater difficulty being able to understand, manage and cope with the issues of childhood. He also testified that the system did not do a good job in promoting African-American boys and that the older Bishop got, the harder it would be to find an adoptive

home. Finally, respondent's treating therapist, Timothy Monroe, testified he could not say whether Bishop would be harmed if returned to respondent's care and that all his opinions were based entirely on information provided from respondent, and thus, his opinion with regard to respondent's ability to specifically parent Bishop might change if he had more information about Bishop and the case in general.

This evidence, in addition to the multitude of evidence outlining the child's aggressive and destructive behavior, his lack of bonding with respondent, and the testimony of petitioner's witnesses indicating termination would be in Bishop's best interests clearly indicated termination would not be against his best interests.

We reverse the trial court's order to the extent that it did not find that a statutory ground for termination had been established. However, because reunification efforts have been in process since the entry of the order in July 2004, and to safeguard the interests of the minor child, we remand for a best interests hearing based on the current situation. Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Kathleen Jansen  
/s/ Christopher M. Murray  
/s/ Pat M. Donofrio